

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10023-GAO

MICHAEL A. SUBENKO,  
Petitioner,

v.

LUIS SPENCER,  
Respondent.

ORDER DENYING  
CERTIFICATE OF APPEALABILITY  
February 28, 2005

O'TOOLE, D.J.

This petition was dismissed because it was untimely filed. The petitioner now seeks a certificate of appealability. Because the dismissal of an untimely petition does not raise a substantial question of denial of a constitutional right, see 28 U.S.C. § 2253(c)(2), and because it was clear on the record that the petition was untimely as a matter of fact, the application for a certificate of appealability is denied.

There is no reason in this case to apply the doctrine of equitable tolling to relieve the petitioner of the expiration of the limitations period. The doctrine is to be applied only in the rare case where the petitioner faced obstacles to timely filing that were out of his control. Ignorance of or inattention to the limitations period, even by a pro se petitioner, does not suffice. See Lattimore v. DuBois, 311 F.3d 46, 55 (1st Cir. 2002), *citing Delaney v. Matesanz*, 264 F.3d 7, 15 (1st Cir.2001).

DATE

*February 28, 2005*

DISTRICT JUDGE

*Luis Spencer*